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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 495

JOHN T. DALY, *Petitioner*

v.

JOSEPH F. FINNEGAN, Director, Federal Mediation and Conciliation Service, L. E. EADY, Director of Administrative Management, Federal Mediation and Conciliation Service, PHILIP YOUNG, Chairman, United States Civil Service Commission ET AL., *Respondents*

REPLY TO OPPOSITION FILED BY RESPONDENTS

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REPLY TO OPPOSITION FILED BY RESPONDENTS

Petitioner respectfully presents the following brief as his Reply to Respondents' Opposition filed herein.

Respondents contend (Opp. 8) that the "disputed evidence", being the wiretap evidence, obtained at 3:15 PM on April 3, 1952, "is relevant, as the Court below recognised, only to Charge 1(c), [A & P Stores], that Petitioner made false representations during that conversation." But Respondents have made no attempt to show, as they are required to do, that such "false representations" in that conversation were confined *solely* to the A & P Stores situation. The bold assertion, and a conclusion, standing alone

as it does that "The transcription is immaterial to the rest of the first charge * * *", is no proof of the assertion.[1] Respondents urge that it was not necessary to pass upon whether the wiretap evidence "was or was not properly considered." Petitioner submits that the Court below was first required to pass on the question of whether there had been a violation of Section 605, and if it found a violation, then, since the unlawful evidence had been already considered and Petitioner's removal based upon such unlawful evidence, were Petitioner's substantial rights affected or was he denied a fair and impartial hearing. If the Court below reached an adverse decision on these questions, then all other procedural errors, relied upon here, would have to be reached and adversely to Petitioner before the Court below could rely upon the validity of one or more charges as reasons for removal. A favorable finding upon a procedural error would entitle Petitioner to reinstatement.

Respondents insist (Opp. 9(1)) as to Charge 2 that "a specific instance of intoxication" and "a conversation with his superior about Petitioner's intemperance", satisfies the statutory rule as to specificity under Section 14 in the broad and sweeping charge of a "habit of intemperance". Respondents give a singular meaning to the word, "habit". Respondents rely upon *Williams* v. *Craven*, *supra*, and quote a part of a sentence therefrom. Significantly, the *Williams* case, *supra*, did not involve a Veteran so it was before the Court below under the Lloyd-LaFollette Act of August 24, 1912, 37 Stat. 555, 5 U. S. C. 652. There is no

[1] All were agreed in District Court that more than one charge was based upon the wiretap evidence. Judge Kirkland found that, "It is quite clear that two of the charges are *completely predicated* upon that telephone conversation * * *." (R51) In Defendants' Motion for Rehearing in District Court (P2), it was admitted that "the substance of the conversation [between Holbrook and Petitioner at 3:15 PM] formed the basis *for some of the charges* thereafter made against the plaintiff." (italics supplied)

provision in this Act requiring specificity and detail in the reasons for the separation. The Agency had given Appellant a second reason for removal independent of the first one in which on passing on particular loans he had failed to consider "all important and relevant data." Appellant requested a list of the loans and instances when he had failed to consider "all important and relevant data". The Administrator replied specifying "several such." The Court relied upon the second reason for removal and in the complete sentence said: (p. 876) "In contrast, the charges here were amplified, upon request, by particulars, and in the light of all the circumstances, they furnished Appellant with sufficient information to prepare his defense". The Court below also cited the *Williams* case, *supra*, (App. 4a), but there to support the validity of the *second charge with particulars*, for Appellant's dismissal. (Italics supplied) We are unable to comprehend how the Agency could have given the Appellant any more specificity of the reasons for his dismissal than were given him in the second charge. At any rate, the Agency did not rely upon Appellant's disposition of a *single* loan to support the general charge. How then can it be said that Petitioner could answer a charge of intoxication on a certain date and at a certain place without first being apprised of the time and place.

Respondents' contention (Opp. 10-11(2)), as to Petitioner's Question IV, (Pet. 19-20), is without merit. Here it is proposed to substitute the Agency's Notice of November 14, 1952 to Petitioner of the effective date he "will be separated", it being on the very same day of November 14, 1952, (R14), for the statutory requisite of Section 14 that Petitioner was entitled to have in the decision which removed him which of the charges were relied upon for removal. But Respondents' reliance upon *Green* v. *Baughman*, and *Blackmon* v. *Lee*, *supra*, is misplaced. In the *Green* case, *supra*, the Court below said: (p. 612) "We think direct reference to the charges as sustained was a

sufficient statement of the reasons for the discharge." In the adverse decision which removed Petitioner (R18-19), there was no reference whatsoever to any charge so there could not have been any allusion to one or more of them as having been sustained. The adverse decision, as aforesaid, merely provided that, "Mr. Daly's removal • • • was warranted." Thus, if Petitioner's removal was "warranted", then as said in the *Mulligan* case, *supra*, (Pet. 19) his retention was such as to show his "unsuitability." In the *Blackmon* case, *supra*, the Court below had before it the Appellant's principal contention that Section 14 required a finding that his discharge could only be accomplished "for such cause as will promote the efficiency of the service." The Court rejected this contention, but Respondents quote (Opp. 11), "complied in all substance with Section 14." The complete sentence is stated: (p. 14) "Though all question might have been eliminated by more precision *in the original notification of removal* we think the foregoing demonstrates that the *procedures which were followed* complied in all substance with Section 14." (Italics supplied) Petitioner's question presented IV (Pet. 19-20) makes it abundantly clear that the precision "in the original notification of removal", bears no relationship to the requirement of Section 14 that the adverse decision which removed Petitioner must contain which of the charges were relied upon for removal. However, Appellant Blackmon made no contention that under Section 14 the adverse decision which removed him shall be "for reasons given in writing". In fact, the opinion fails to refer to the above quoted words of Section 14. Accordingly, this part of Section 14 which was not before the Court below was not one of the "procedures" which the Court below was called upon to follow.

CONCLUSION

It is respectfully submitted that under all of the circumstances here and in the widespread public interest of the Government personnel as well as protection to those engaged in civil matters in our Courts, where frequently the United States is a party, the case is such as should call for the exercise of this Court's supervisory powers.

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